

FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 173954

PRELIMINARY RECITALS

Pursuant to a petition filed on April 29, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit regarding FoodShare benefits (FS), a hearing was held on July 26, 2016, by telephone.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$1,966 from the Petitioner for the periods of July 1, 2015 – September 30, 2015 and October 7 – 31, 2015 due to dual participation in the FS program for Petitioner's grandchildren.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Public Assistance Collection Unit
P.O. Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On or about June 19, 2015, the Petitioner requested to add her four grandchildren her to Wisconsin FS case. On July 1, 2015, the agency received verification from a Kinship Care worker that the Petitioner's grandchildren were living with her in Wisconsin. On July 2, 2015, the agency issued a Notice of Decision to the Petitioner informing her that she would receive \$854/month in FS benefits effective July 1, 2015 for a household of six that included herself, her four grandchildren and another individual. The notice indicates that this is based on gross household income of \$1,180.76/month and rent of \$1,545/month.
3. On November 4, 2015, the agency received information that Petitioner's four grandchildren received FS benefits from Louisiana and Wisconsin during the period of July 1, 2015 – October 31, 2015. The children's mother was receiving FS benefits for the children in Louisiana during that period.
4. On April 22, 2016, the agency issued FoodShare Overpayment Notices to the Petitioner informing her that the agency is seeking to recover an overissuance of FS benefits in the total amount of \$1,966 from the Petitioner for the period of July 1, 2015 – September 30, 2015 and October 7, 2015 – October 31, 2015.
5. On April 29, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Handbook (FSH), § 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FSH, § 7.3.1.9. However, overpayments due to “agency error” may only be recovered for up to 12 months prior to discovery. FSH, § 7.3.2.1. Overpayments due to “client error” may be recovered for up to six years after discovery. *Id.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

No individual may receive FS benefits as a member of more than one household. 7 CFR 273.3.

In this case, the agency does not dispute that the four children were living with the Petitioner in Wisconsin during the overpayment period. The agency asserts that this overpayment resulted from a client error because the children were receiving benefits in Louisiana before the Petitioner applied for benefits for them here. The agency testified that Wisconsin is considered the state of second issuance and is responsible to establish and recover the overpayment from the recipient. The agency did not provide the authority to support this argument.

The agency asserts that this was a client error because the grandmother failed to report that the children had moved from Louisiana and failed to verify that they were no longer receiving benefits in Louisiana. The agency did not submit documentation that demonstrates that the Petitioner inaccurately answered questions about the children receiving benefits in another state. The case comments do not indicate that there was any discussion between the Petitioner and the agency workers at the time the grandmother added the children about where the children had come from or whether they were receiving benefits elsewhere. There is documentation that verification of residence was requested and there is no dispute that the children were living with the grandmother during this period. It is not clear that there was any

error on the part of the Petitioner in requesting the benefits. It also appears that there may be agency error in not following its protocol to request sufficient information about the children to determine if they were receiving benefits elsewhere.

The Petitioner does not dispute that she applied for benefits for her grandchildren. She testified credibly that she was unaware that the children's mother was still receiving benefits for them in Louisiana. She believed that the agency had contacted the Louisiana FS agency to verify that the children were not receiving benefits there. Since the children were living with her and not with their mother, the Petitioner asserts that she should not be responsible for the overpayment but that the children's mother should be responsible. She argues that the children's mother committed wrongdoing and should be responsible for the overpayment.

There appears to be no dispute between the parties here that the children's mother committed a program violation by not reporting to the Louisiana agency that her children were no longer in her household and continuing to receive benefits for them or the Louisiana agency failed to properly remove the children from the mother's case. I conclude that the agency has not met its burden to demonstrate that there was an error on the part of the Petitioner in receiving FS benefits for her grandchildren during the period of July 1, 2015 – October 31, 2015. The children were living with her and she testified credibly that she was unaware that the children's mother was continuing to receive benefits for them in Louisiana. There is no evidence that the agency asked where the children had come from or that the agency followed up to determine if they were receiving benefits elsewhere. Any policy that requires the state of second issuance to establish and recover an overpayment is not reasonable in this situation. There was also no evidence regarding whether the mother receiving benefits in Louisiana was the result of a program violation by the mother or an error by the Louisiana agency. In any case, I find no error by the Petitioner.

I conclude the agency has not met its burden of demonstrating that the Petitioner committed an error in receiving FS benefits for her grandchildren that were living with her for the period of July 1, 2015 – October 31, 2015 and it may not recover an overpayment from her.

CONCLUSIONS OF LAW

The agency has not met its burden of demonstrating that the Petitioner committed an error in receiving FS benefits for her grandchildren that were living with her for the period of July 1, 2015 – October 31, 2015 and it may not recover an overpayment from her.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind Claim # [REDACTED] and # [REDACTED] against the Petitioner and to cease all actions to collect any overpayment against the Petitioner related to these claims. These actions shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

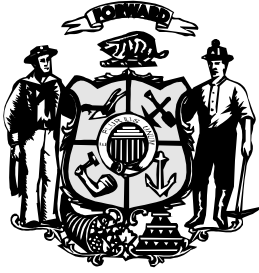
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of August, 2016

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 19, 2016.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability